IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Bail Appl..No. 6374 of 2007()

CRIME NO. 221/07 OF ELATHUR POLICE STATION

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PETITIONERS/ACCUSED NO. 1 - 5

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1. K.T.CHANDUKUTTY, AGED 76 YEARS,
   S/O. CHATHU, KOLODITHEKKEYIL HOUSE,
   ERANHIKKAL P.O., ELATHUR, KOZHIKODE.

2. K.T.SANIL KUMAR, AGED 42 YEARS,
   S/O. CHATHUKKUTTY, KOLODITHEKKEYIL HOUSE,
   ERANHIKKAL P.O., ELATHUR, KOZHIKODE.

3. K.K.BALAN, AGED 64 YEARS,
   S/O. ANDIKKUTTY, KEETTUKANDIYIL HOUSE,
   ERANHIKKAL P.O., ELATHUR, KOZHIKODE.

4. P.PRADEEP KUMAR, AGED 46 YEARS,
   S/O. SEKHARAN, PUZHAVAKKATH HOUSE, ERANHIKKAL PO.,
   ELATHUR, KOZHIKODE.

5. K.K.DILEESH, AGED 26 YEARS,
   S/O. K.K.BALAN, KEETTUKANDIYIL HOUSE,
   ERANHIKKAL P.O., ELATHUR, KOZHIKODE.

BY ADV. SRI.K.SUNILKUMAR
SRI.K.SANEESH KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6374 of 2007

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Dated this the 15th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations for offences punishable, inter alia, under Sections 452 and 308 r/w. 149 I.P.C. About an alleged incident, which took place on 6.10.2007, two cases in the nature of a case and counter case have been registered by the police. In the crime registered against the petitioners, allegations are raised for offences punishable, inter alia, under Sections 452 and 308 r/w. 149 I.P.C. The counter case, i.e. Crime No.222 of 2007, is registered for offences punishable, inter alia, under Sections 324 and 506(i) I.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The premises belong to the first petitioner. The first petitioner had gone to a civil court and by decree dt.24.8.2007 in O.S. No. 546 of 2006 the defacto

complaint has been restrained from entering the building in question. According to the petitioners, the defacto complainant, in violation of the order of injunction of the civil court, had come to the premises and caused the commencement of the incident. The learned counsel for the petitioners submits that the police is acting hand in glove with the defacto complainant and false and vexatious allegations are raised against the petitioners. Incorporation of Section 308 I.P.C. bears eloquent testimony for the partisan attitude of the police, the counsel submits.

3. The learned Prosecutor opposes the application. The Case Diaries in both the crimes have been placed before me. The learned counsel for the petitioners has placed before me copy of the judgment in O.S.No. 546 of 2006. I shall at this early stage of investigation not embark on any detailed discussion on merit about the acceptability of the allegations raised or the credibility of the data collected. I shall not venture to make any expression of opinion on the rights of the parties also. However, I am satisfied, on an anxious perusal of the two case diaries and consideration of all the relevant inputs, that this is an

eminently fit case where directions under Section 438 Cr.P.C. can be issued in favour of the petitioners. Appropriate conditions can, of course, be imposed in the interests of a fair, efficient and expeditious investigation.

4. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall surrender before the learned Magistrate on 22.11.2007 at 11 a.m. The learned Magistrate shall release the petitioners on regular bail on condition that they execute bonds for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 5 p.m. on 23.11.07 and 24.11.2007. During this period, the investigators shall be at liberty to interrogate the petitioners in custody and take all

necessary steps in connection with the investigation. Thereafter they shall appear before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioners do not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 22.11.07 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(d) If the petitioners were arrested prior to their surrender on 22.11.9.2006 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs.50,000/- each without any surety undertaking to appear before the learned Magistrate on 22.11.2007.

(R. BASANT)
Judge

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